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Ninety-eighth session

Summary record of the 2695th meeting

Held at Headquarters, New York, on Monday, 15 March 2010, at 10 a.m.

Chair: Sir Nigel Rodley (Vice-Chair)

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In the absence of Mr. Iwasawa, Sir Nigel Rodley, Vice-Chair, took the Chair.

The meeting was called to order at 10.15 a.m.

1. **The Chair**, speaking on behalf of the Committee, expressed his deepest condolences to Mr. Iwasawa, whose mother had passed away.

Organizational and other matters (*continued*)

Working methods (*continued*)
(CCPR/C/2009/1/CRP.2; HRI/GEN/2/Rev.5)

2. **The Chair** invited the Committee to continue its consideration of the draft revised guidelines (CCPR/C/2009/1/CRP.2).

3. **Ms. Keller**, recalling the discussions of the Committee at its ninety-seventh session on the draft revised guidelines, drew attention to those paragraphs in which approved changes had been incorporated, namely, paragraphs 14 and 15 on focused reports based on replies to lists of issues, and paragraph 25, which now included a proposal made by Ms. Wedgwood for the consideration of the Committee. She suggested that the Committee might wish to discuss paragraph 17 in light of its recent meeting with representatives of the Department for General Assembly and Conference Management (DGACM) and the Programme Planning and Budget Division (PPBD); as currently drafted, the paragraph imposed no page limits on reports of States parties.

4. **Mr. Thelin** said he was in favour of setting page limits for States parties' reports.

5. **Mr. Lallah** said that while he, too, generally supported setting page limits, it was difficult to determine an appropriate limit, as some questions on a list of issues required detailed responses, whereas other, more general ones could be covered in the core document submitted by a State party. In that connection, he wondered whether the Committee might consider asking States to cover some of the questions normally asked on a list of issues in their core document.

6. **Mr. Pérez Sánchez-Cerro** said that it was clear from the Committee's meeting with DGACM and PPBD representatives that, rather than seek additional funding for document processing, the Committee should strive to reduce the documentation produced by and for its meetings. He therefore supported setting page limits on reports submitted by States parties; such limits would furthermore guide them in providing the focused responses sought by the Committee. The importance of the timely submission of States parties' reports should also be emphasized.

7. **Mr. O'Flaherty** said that he questioned the usefulness of discussing page limits before more substantive issues, such as the content and format of the list of issues.

8. **Mr. Amor** said that he supported streamlining the reporting process, on the understanding that the Committee would explore issues that remained unclear in more detail during its constructive dialogues with States parties. Furthermore, the Committee must cease treating States parties unequally with regard to the amount of time allocated to the consideration of their reports: one rule should apply to all.

9. **Ms. Motoc** said that it was difficult to determine a page limit that was appropriate to all States parties. Moreover, imposing additional rules on States parties would not necessarily facilitate the Committee's work. She supported the statement made by Mr. Amor regarding the need to allocate every State party the same number of hours for consideration of their report. However, it was also the Chair's responsibility to guide the constructive dialogue with the State party in order to cover the issues raised by the Committee in a satisfactory manner.

10. **Ms. Chanet** said that she agreed that the issue of page limits would resolve itself once the Committee had adopted guidelines on the content and format of the list of issues. The Committee was aware of the types of questions that were likely to lead to lengthy responses by States parties and should refrain from asking for additional details where possible. Furthermore, some questions could be covered in the core document, as proposed by Mr. Lallah. As for the equal treatment of States parties, she pointed out that some States parties were treated differently because they interacted differently with the Committee. While such situations needed to be dealt with promptly by the Chair, the Committee as a whole should not be criticized for unequal treatment of States parties if the number of hours originally allocated for consideration of a report needed to be increased.

11. **Mr. Thelin** said that while he agreed that all States parties should receive equal consideration by the Committee, it was important to note that not all States

parties adhered equally to the Covenant and that consideration of their reports might therefore require more time. That did not mean, however, that the Committee should not institute a cap on the number of pages in a report, which helped States parties focus more narrowly on the questions put to them. He would therefore be in favour of the shortest possible page limit.

12. **Mr. O'Flaherty** said that information on the page limits currently being imposed by other treaty bodies would be useful.

13. **The Chair** said that, according to the harmonized guidelines on reporting under the international human rights treaties including guidelines on a core document and treaty-specific documents (HRI/GEN/2/Rev.5), common core documents should not exceed 60 to 80 pages, initial treaty-specific documents should not exceed 60 pages and subsequent periodic documents should be limited to 40 pages. Speaking in his capacity as an expert, he said that he was in favour of setting page limits. While the Committee could not countermand the harmonized guidelines, it could decide whether or not to refer to them in its own reporting guidelines.

14. **Ms. Motoc**, noting that the words "if possible" preceded the page limits indicated in the harmonized guidelines, said that the Committee's own guidelines currently left it significantly more flexibility. If the Committee decided to impose a streamlined, more focused report on States parties, the latter might feel the need to express themselves at greater length during the constructive dialogue and thus increase the Committee's workload.

15. **Mr. O'Flaherty**, pointing out that the suggested page limits referred to in the harmonized guidelines had in fact been drafted by the Secretariat, proposed that the limits should simply be referred to in the Committee's revised guidelines.

16. **Ms. Keller** said, in reply to Mr. Amor, that the question of a page limit had been dictated by a concern to provide guidelines applicable to all countries. Concerning Mr. Lallah's suggestion that some issues might be transferred to the core document, she pointed out that the Committee was not competent to determine what went into that document.

17. **The Chair** said that he had understood Mr. Lallah to mean that in cases where an issue was already addressed in the core document, it could be omitted from the focused report. He proposed that paragraph 19 should remain pending in the absence of a consensus and that the Committee should proceed on an article-by-article basis.

18. **Mr. Lallah** said that his concern had been to reduce the number of questions, which took up more than 70 paragraphs in the draft revised guidelines, either by transferring or eliminating some of them. Furthermore, it would be useful to make it clear whether initial reports or focused reports were being referred to: some questions seemed to concern the initial report and others to relate to both.

19. **The Chair** said that there was indeed no need to repeat what was already in the core document. The guidelines related to some extent to the initial report, but they remained relevant to subsequent reports, including the focused report option.

20. **Ms. Chanet** said that the most important issues should be addressed in the initial report and that an effort should be made to eliminate any duplication.

21. **Mr. Fathalla** noted that paragraph 27 of the draft referred to "the most urgent problems arising in the reporting period": that was clearly applicable to both types of reports.

22. **Ms. Keller** said that paragraph 16 clearly indicated that States not subject to the procedure described in paragraph 15 should follow the guidance provided in paragraphs 18 to 103. In the new procedure, those paragraphs would not be applicable: questions would be chosen according to their importance for the State party concerned. Detailed questions would apply to initial or to full reports.

23. Turning to the chapeau provision in paragraph 27, she stressed that the questions were only possible ones and that States parties would not be required to answer every one of them; they might, however, serve to guide officials in preparing the report. On the possible elimination of questions addressed in the core document, it had to be carefully checked that they were indeed covered in that document, bearing in mind its non-specific character.

24. **The Chair** noted that the document under consideration was not designed to provide strict rules but merely guidelines. With regard to the issue raised by Mr. Amor concerning the different number of hours allocated to each State for consideration of periodic

reports, he proposed that it should be addressed separately, perhaps by the Bureau.

25. **Ms. Majodina** asked when it had been agreed that the new procedure would not apply to the initial report, as stated in paragraph 15.

26. **Ms. Keller** said that the Committee had so decided in October 2009 and that no changes had been made to the draft guidelines, which were based on the Committee's practice, since that time. She also recalled that the criteria for selecting countries to be discussed in closed meeting were intended for the use of the Committee, not of States parties. Reverting to the question of the relationship to the core document, she cited paragraph 34 as an example of that document being taken into account.

27. **The Chair** noted that the wording of the draft guidelines was, however, completely new in relation to the original guidelines, which were still in force.

28. **Mr. O'Flaherty** said that it might be useful to request in paragraph 27 that, when a State had already provided relevant information in its core document, it should refer thereto in its treaty-specific report; a simple cross-reference would suffice. That paragraph might also refer to all relevant General Comments, but in general terms, as new ones were constantly being adopted by the Committee.

29. **Ms. Keller** said that Mr. O'Flaherty's first suggestion could easily be accommodated; as for the second, it was already covered by paragraph 18.

30. **Mr. O'Flaherty** noted the omission of any reference to a General Comment in paragraph 85; that was no doubt due to the fact that a new one was currently being drafted on article 19, to which it related. Once the new General Comment was adopted, however, it would be appropriate to refer to it in that paragraph. Since the Committee could not revisit the guidelines each time a new General Comment was adopted, the solution would be to insert a chapeau provision in section IV.

31. **Mr. Thelin** said that he agreed on the need for a clear reference to all relevant General Comments. Paragraph 13, which identified the various types of reporting scenarios, might be a good place to insert such a chapeau provision.

32. **The Chair**, speaking in his capacity as an expert, said that it would be useful to refer as appropriate to General Comments under each article; it would then be necessary to amend the reporting guidelines each time a new one was adopted. That question would need to be taken up at a later stage. In his capacity as Chair, he invited the Committee members to consider the draft guidelines article by article.

Articles 1-2

33. *Paragraph 28, relating to article 1, and paragraphs 29-33, relating to article 2, were approved.*

Articles 2 (1), 3 and 26

34. **Ms. Majodina** proposed the inclusion in the last bullet of paragraph 35 of a request for information about the mechanisms for reporting such cases, in addition to information about steps taken to eliminate such discrimination.

35. **Mr. O'Flaherty** wished to know why article 26, which was so important in itself, had been grouped with articles 2 (1) and 3. He also wondered whether there was a sufficiently clear indication of the need for disaggregated data regarding discrimination. Paragraph 38 adequately addressed the various forms of discrimination against women, but paragraph 35 did not cover all possible grounds of discrimination. The first bullet of that paragraph might usefully stipulate "other status, as well as on any other grounds identified by the Committee", so as to make it clear that the Committee's concerns were not limited to the grounds listed in articles 2 and 26.

36. **Ms. Keller** said that she could accept Ms. Majodina's suggestion. In reply to Mr. O'Flaherty's question, she said that the three articles had, exceptionally, been grouped together in line with the Committee's current practice regarding lists of issues. She could also accept his suggestion to include a reference in paragraph 35 to other grounds of discrimination identified by the Committee.

37. **The Chair** said that Mr. O'Flaherty's proposed new wording might suggest that new categories of discrimination had been introduced even beyond those already covered by "other status"; that would need to be ironed out.

38. **Mr. O'Flaherty** suggested the following amended new wording: "other status, such as those identified in the practice of the Committee". He continued to wonder whether the need for disaggregated data

regarding all grounds of discrimination was adequately covered. Specific language was not required, but merely a mention of the importance of disaggregated data across all grounds of discrimination.

39. *Paragraphs 34 to 38, relating to Articles 2 (1), 3 and 26, were approved, subject to drafting changes.*

Article 4

Paragraphs 39 to 43

40. **Mr. Fathalla**, referring to paragraph 41, wondered what the words "correct exercise" meant, when it came to the use of extraordinary powers during a period of emergency.

41. **Ms. Keller** said that the phrase meant "in conformity with the Covenant".

42. **The Chair** suggested the following wording: "to ensure that measures taken under a state of emergency are consistent with the requirements of the Covenant".

43. **Mr. O'Flaherty** said that paragraph 42 should include a requirement for the State party to inform the United Nations Secretary-General.

44. **Ms. Keller** said that she agreed, but added that if the Committee continued along those lines, the list could become longer than before, as the previous text had excluded items that had already been spelled out in the Covenant.

45. **The Chair** reminded the Committee that a notification requirement was already in the table of ratifications, reservations and notifications, and that it was not necessary to include it in paragraph 42.

46. **Mr. O'Flaherty** said that it was better to include the requirement. It was not just an incidental detail, but an important provision that was often ignored and violated, even though it could serve as a pedagogical tool and a control element for the States. By being reminded of that notification obligation, States might just end up informing the Secretary-General in the process.

47. **Mr. Lallah** said that other bodies, including the Human Rights Committee, were also more likely to be notified.

48. **Ms. Chanet** suggested moving paragraph 33 on terrorism from article 2 to article 4, where it belonged logically.

49. *Paragraphs 39 to 43 relating to article 4 of the Covenant were approved, as amended.*

Article 6

Paragraphs 44 to 47

50. **Mr. O'Flaherty**, turning to paragraph 47, said that he regretted that little reference was made to non-death penalty-related elements. In addition, the reference in the second bullet to measures taken to help women prevent unwanted pregnancies was unrelated to article 6 as drafted. Given the very narrow basis on which abortion was dealt with by the Committee, the reference should be nuanced. According to the jurisprudence and practice of the Committee, article 6 did not include a generic entitlement to prevent unwanted pregnancies. Accordingly, the text should be redrafted to refer, for example, to measures taken to help women avoid practices that would put their lives at risk.

51. With regard to the last bullet of paragraph 47, General Comment No. 14 referred to nuclear proliferation and hence the reference to nuclear disasters was acceptable. However, including other items such as environmental pollution and malnutrition went too far and was not consonant with the Committee's practice.

52. **Ms. Keller** noted that equal access to information and medical care concerning pregnancy had already been covered in several State reports. Nevertheless, if her understanding was incorrect, then maybe the wording could be amended.

53. **Ms. Chanet** said that the Committee should simply ask States what they did in cases of unwanted pregnancies and in situations where the mother's life was at risk.

54. **Mr. Thelin** said that parts of the bullet were straying too far into the area of positive rights; he suggested deleting it altogether and adding language to the penultimate bullet to capture the idea of risk to the mother's life.

55. **The Chair** suggested that paragraph 47 could simply borrow from the language of General Comment No. 28, paragraph 10, which stated that: "States parties should give information on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions".

56. **Mr. O'Flaherty** said that he failed to see how the generic issue of unwanted pregnancies fell within the ambit of the Covenant. The solution of deleting the last bullet of paragraph 47 was not ideal; instead, the language could be amended to capture social risks to life and life expectancy, without going into economic, social and cultural areas. Wording to the effect of "measures taken to increase life expectancy, including through addressing the risk to life to be found in society", could be included in the text.

57. **The Chair** suggested that the first clause could read "measures taken to increase life expectancy through reduction of infant mortality", or the reference to the reduction of infant mortality could simply be removed.

58. **Ms. Motoc** suggested that if social and economic rights were indivisible from civil and political rights, they should be included.

59. **The Chair** suggested a compromise solution of keeping only the first six words of the bullet point "measures taken to increase life expectancy".

60. **Mr. Salvioli** said that he supported the proposed text as drafted and did not feel that it strayed into areas beyond the Committee's mandate.

61. **Ms. Chanet** said that those rights were already in the core document and did not need to be repeated in the proposed text, because it would only give States parties another excuse to digress and to inundate the Committee with information about countless programmes and plans of action. She suggested deleting the bullet to limit the number of pages that States parties would produce.

62. **Mr. O'Flaherty** said that he agreed that the bullet should be deleted.

63. **The Chair**, speaking in his capacity as an expert, suggested that in the first bullet of paragraph 45, the Committee should guide States parties as to the approaches to be followed in the use of force and firearms by the police and security forces. He preferred making reference to a soft law from another body, typically the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials, as other treaty bodies and international courts often did. At the very least, the use of force and firearms should reflect the principle of necessity, meaning that minimum reasonable force should be used, or of proportionality, meaning that such force should be commensurate with the objective to be obtained. Indeed, the Committee itself had already made reference to such soft law in some of its concluding observations and in individual cases.

64. **Mr. Amor**, in reference to paragraph 47, suggested adding the notion of honour crimes to the points listed in the penultimate bullet.

65. **Mr. Thelin** suggested that the word "honour" should be put in quotation marks, or that the qualifier "so-called" should be added to reflect the fact that those crimes had nothing to do with real honour.

66. *Paragraphs 44 to 47, pertaining to article 6 of the Covenant, were approved, as amended.*

Article 7

Paragraphs 48 to 53

67. **Ms. Chanet**, referring to paragraph 48, welcomed the clear and precise language of the first four bullets and requested that the fifth and sixth bullets should be revised to bring them in line with the first four. In paragraph 49, the reference to "detailed information" should be removed and States parties should simply be asked to "indicate" the measures taken to ensure dissemination of information to the population, to prohibit torture, to provide training to law enforcement officials, and to compensate victims.

68. **Mr. Amor** expressed concern about the end of paragraph 53, which referred to practices governing experimentation on human beings and mechanisms to ensure that experimentation on individuals not capable of expressing free consent was made impossible. In difficult circumstances where the life of a person depended on the use of medication that had not been fully tested, it would be reasonable to allow parents or legal guardians to be able to give such consent, especially in cases of road accidents, albeit within legal limits.

69. **Ms. Chanet** said that the Committee had already taken a position on the issue of experimentation in its concluding observations on the Netherlands. Reference could be made to the measures taken to ensure consent in the case of experimentation, and perhaps a question could be asked regarding what happened to people who could not give such consent.

70. **The Chair** suggested simply asking what measures States had taken to ensure that consent was

given, without being as peremptory as the paragraph would suggest.

Article 8

Paragraphs 54 to 57

71. **Mr. O'Flaherty** said that in paragraph 54, the phrase "any resurgent form of slavery" should be replaced by "contemporary forms of slavery". The word "prostitution" should be deleted, as the Committee had never stated that it fell under article 8. The phrase "prostitution and human trafficking" should be replaced with "all forms of human trafficking". The phrase "in this regard" should be deleted.

72. A bullet should be added to paragraph 54 regarding training for all public officials involved in addressing trafficking. While many States had excellent laws against trafficking, officials lacked understanding of the issue. Paragraph 57 should be deleted. Compulsory military service had been dealt with under article 18, not as an issue related to slavery or servitude.

73. **Ms. Motoc** said that since the reference to slavery covered servitude as well, the word "servitude" in paragraph 54 was unnecessary. In many cases, prostitution was quite close to trafficking in persons. Consent was sometimes weak. While in some countries work permits were issued to prostitutes, the trend in human rights was away from legalizing prostitution. The issue of demand for trafficking must be addressed directly: trafficking existed because there was a demand for it.

74. **Mr. Amor** said that many forms of servitude were not new, for example, slavery. He therefore preferred the phrase "all forms of servitude and trafficking", without reference to prostitution and the abduction of women and children. The phrase "measures to eradicate definitively all forms of servitude" could also be included.

75. **Mr. O'Flaherty** noted that the purpose of his drafting comments was not to express a personal position, but rather to achieve a document which best expressed the practice of the Committee. He had not expressed a personal view on the relationship of prostitution to human rights.

76. **Ms. Chanet** said that she agreed that paragraph 57 should be deleted. She also agreed with Mr. O'Flaherty's comments on prostitution and with those of Mr. Amor in reference to paragraph 54.

77. **Ms. Motoc** said that she had not expressed a personal view on prostitution. Rather, her comments reflected a position which was widely held and which had been voiced by the Special Rapporteur on violence against women, its causes and consequences and by the Special Rapporteur on trafficking in persons, especially in women and children.

78. **The Chair** said that the present meeting was not the forum for establishing new policy.

79. **Mr. Rivas Posada** agreed that paragraph 57 should be deleted.

80. **Ms. Keller** said that she endorsed the suggestion to delete paragraph 57 and add a fourth bullet in paragraph 54. However, given that the document was addressed not just to human rights experts, in her view the phrase "such as abduction of women and children" should not be deleted. Perhaps it could be included in parentheses, after the word "servitude". The new version of the paragraph would read as follows: "Indicate what legal and other measures have been taken to prevent and combat any contemporary form of slavery and other forms of servitude (such as abduction of women and children) and trafficking."

81. **The Chair** said that just a few days earlier, Uzbekistan had referred to alternative military service under article 8. Therefore, for the purpose of informing States how the issue was to be dealt with, perhaps paragraph 57 should contain a reference to article 18, and the present paragraph 57 should be moved to the section covering article 18. It appeared that the members of the Committee agreed with that approach, as they did with the new version of paragraph 54.

82. **Mr. Amor** noted that there should be mention of domestic labour. In some cases, it amounted to a form of slavery, often involving little girls.

83. **Ms. Chanet** expressed concern about the risks involved in making lists. In her view, forced marriage was worse than prostitution. If a list was compiled, something would surely be left out. It was better to use more generic terms.

84. **The Chair** said that, paradoxically, the more inclusive the Committee was, the more implicitly exclusive it would be. However, the purpose was to give guidance to States, and generic language added

little to what was already in the Covenant. Two approaches had taken shape in the course of the discussion, one of which was to mention slavery, contemporary forms of slavery and all other forms of servitude and to stop there. The other approach was to include the abduction of women and children, all forms of human trafficking, enforced domestic work and forced marriage. He saw the inclusive route as more helpful to States. The purpose of the current exercise was to provide guidance to States, and it was therefore necessary to make the guidelines reflect the current Committee practice.

85. **Mr. Lallah** said that bonded labour should be mentioned, as well. The Committee had dealt with the issue in the case of India.

86. **The Chair** said that as bonded labour was a contemporary form of slavery, he had no objection to including it.

87. **Ms. Motoc** said that bonded labour was not new.

88. **Mr. Amor** said that it was best to use generic terms in the text and raise specific issues with States.

89. **The Chair** said that if generic terms were used rather than a list, those terms would include contemporary forms of slavery and all forms of servitude. There should also be mention of trafficking.

90. After requesting the members of the Committee to indicate by a show of hands which of the two approaches they supported, he noted that the room was evenly divided in its opinions.

91. **Ms. Majodina** said that there should be a list. In many countries, such forms of servitude as abduction of women and children and forced marriages were traditional practices, and even government officials saw nothing wrong with them. It would be useful to draw the attention of States parties to the fact that such practices were wrong and in violation of article 8 of the Covenant. In many African countries, people saw nothing wrong with a child of 5 years of age working in a huge household.

92. **Mr. O'Flaherty** said that he favoured generic references because the guidelines must be applicable to all countries, regardless of their human rights situation. A list would be imperfect because it would encompass only certain phenomena. The term "contemporary forms of slavery" was inclusive, covering all types of abuse. He would prefer the reference to trafficking to be retained, but was prepared to join a consensus in the interest of saving time.

93. **Ms. Motoc** said that certain issues should be emphasized to avoid a situation in which States thought that change was not necessary. Because generic terms would let them avoid the issue, she favoured a list.

94. **Mr. Amor** said that the positions of the Committee members were in fact quite close to each other.

95. **Ms. Chanet** said that although she had previously held the position that it was better not to be too specific, she could see that States would gain a better understanding of their violations if certain types of violations were explicitly named. The whole world must be treated with complete equality.

96. **The Chair** said that it was his understanding that a consensus had been achieved: rather than generic terms, there would be a list of specific violations in paragraph 54.

97. **Mr. Fathalla** requested clarification as to why the three bullet points in paragraph 54 referred only to trafficking rather than to all the issues in the chapeau, given that trafficking was already referred to in the chapeau.

98. **Ms. Keller** said that it would be necessary to look at the revised text. She suggested that the Committee should study the new version and determine if it wished to retain paragraph 55 as written.

99. **The Chair** said that that issue could be considered at a later date.

The meeting rose at 1.02 p.m.